Government of
Saskatchewan

ANNUAL REPORT
1991

Saskatchewan
Public and Private
Rights Board

92-05597/

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Saskatchewan

Saskatchewan
Public and Private
Rights Board

Gold Square
215 - 3988 Albert Street
Regina, Canada
S4S 3R1

(306) 787-4071
(306) 787-0088 (FAX)

March 2, 1992

Honourable Roy Romanow, Q.C.
President of the Executive Council

Dear Mr. Premier:

As per Section 6(3) of *The Expropriation Procedure Act*, I have the honour to submit to you the Annual Report of the Public and Private Rights Board for the period January 1, 1991 to December 31, 1991.

Respectfully submitted,

Kenneth W. Acton
Chairman

/amn

STAFF

The staff of the Public and Private Rights Board

as at December 31, 1991:

K.W. Acton, Chairman

Arlene M. Nicol, Administrative Assistant

MESSAGE FROM THE CHAIRMAN

Under *The Expropriation Procedure Act*, the Public and Private Rights Board has the authority to review matters relating to the expropriation of land or the intention to acquire land by expropriating authorities. The Board investigates claims and manages negotiations between landowners and expropriating authorities in an effort to help the parties reach mutually acceptable solutions.

Landowners may request the Board to review either or both:

(a) the route, situation or design of a public improvement;

(b) the amount of compensation offered for the expropriated land.

During 1991, the Board handled twenty (20) claims, including thirteen (13) new claims received throughout the year and seven (7) claims carried forward from 1990. The Board concluded its investigation and negotiation of fifteen (15) claims and carried forward into 1992 five (5) requests under active negotiation.

* * * * * * * * * *

The primary role of the Public and Private Rights Board is dispute resolution. The Board assists landowners and expropriating authorities in reaching agreement on the most appropriate route or design of a public improvement and/or what fair and reasonable compensation should be paid for the required land or easement.

> *"The primary purpose of compensation is to place the owner whose land has been taken in the same position financially as he was prior to the taking. On the one hand, the owner should not receive a windfall or unjust enrichment as a result of the taking. On the other hand, the owner should not be required to shoulder an economic loss for the general public benefit which is achieved as a result of the taking."*
>
> (Expropriation in Canada -- A Practitioner's Guide, by Kenneth J. Boyd, Canada Law Book Inc., Aurora, Ontario, 1988, p. 27)

The number of inquiries and requests to the Board for assistance are very minimal when considered in the context of the total number of easements obtained each year. Crown Corporations have, for the most part, successfully demonstrated their ability to acquire easements voluntarily from Saskatchewan landowners. This is an indication that landowners feel they are treated and compensated fairly.

However, the Board does have two specific areas of concern:

(1) *Saskatchewan Telecommunications' Easement Policy*

The greatest number of both informal inquiries and formal requests for assistance result from Saskatchewan Telecommunications' attempts to obtain easements to install buried cable. Almost without exception, the landowner is concerned about what his/her liability is should some damage occur to the buried cable *and* what is considered reasonable compensation for the easement.

Amendments made to Saskatchewan Telecommunications' compensation policy in December of 1990 significantly reduced the number of complaints in this area; however, the Corporation's compensation rates are still not comparable with those of other government agencies. This discrepancy can hamper Saskatchewan Telecommunications' attempts to negotiate easements.

In addition, Saskatchewan Telecommunications often fails to address the landowners' concerns with respect to liability early in negotiations and has been hesitant to clarify any understanding of the issue in its written easement agreement. This lack of commitment often results in the landowner refusing to consent to an easement which, in turn, forces the Corporation to expropriate.

Conversely, Saskatchewan Power Corporation has addressed similar concerns by stating in its easement agreement the fact that the landowner will not be liable for any damage to installations which occur as a result of ***normal farming practises***. Including this statement in the easement agreement generally provides the landowner with a sufficient *"comfort zone"* to consent to the easement request.

Saskatchewan Telecommunications representatives have been encouraged to review the Corporation's easement policy. Although Saskatchewan Telecommunications indicates it has addressed the liability issue by making handwritten amendments to the easement in cases where the landowner has raised the concern, the Board has not experienced this flexibility to date. The situation will continue to be monitored in the hope that these amendments are incorporated into the Corporation's standard easement form. This would ensure that the issue of liability is addressed fairly and openly with all Saskatchewan landowners.

(2) ***Co-operation from Expropriating Authorities***

The second area of concern stems from the fact that Producers Pipeline Incorporated, receiving the power to expropriate under *The Pipelines Act,* was not prepared to attend a meeting and discuss with the landowner his concern about the amount of compensation paid for loss of ownership of land.

The Pipelines Act establishes the procedure to be followed by any party wishing to construct a pipeline in the Province of Saskatchewan. This includes the requirement to make a formal application for a permit to the Department of Energy and Mines and, where appropriate, the granting of the permit by the Minister.

Upon obtaining the permit, the party has the right to take all land it deems necessary for the construction and maintenance of the proposed line. Should it be unable to obtain easements voluntarily from landowners, the party has the power to expropriate the required land in accordance with *The Expropriation Procedure Act.*

Expropriating authorities have always been very co-operative with respect to attendance at meetings in the past; hence, it was particularly disheartening to discover that the power to expropriate was granted to a corporate entity which appears reluctant to adhere to the spirit of the legislation and refuses to meet and discuss a landowner's concerns.

The Board recommends that current legislation be reviewed to ensure that those given the right to expropriate also accept the responsibility of addressing landowners' concerns in a fair and reasonable manner.

TABLES

(a)

Number and Nature of Claims Received, Negotiated, Resolved and Carried Forward by the Board in 1991

I. NUMBER AND NATURE OF CLAIMS NEGOTIATED IN 1991

(A) Carried forward from 1990:

i)	Route, Situation or Design	3	
ii)	Compensation	4	
	Subtotal		7

(B) New claims received in 1991:

i)	Route, Situation or Design	6	
ii)	Compensation	7	
	Subtotal		13
Total			20

II. NUMBER AND NATURE OF CLAIMS RESOLVED IN 1991

i)	Route, Situation or Design	8	
ii)	Compensation	7	
Total			15

III. NUMBER AND NATURE OF CLAIMS CARRIED FORWARD INTO 1992

i)	Route, Situation or Design	1	
ii)	Compensation	4	
Total			5

(b)

Number and Nature of Claims Received by the Board in 1991 (by Expropriating Authority)

EXPROPRIATING AUTHORITY	ROUTE, SITUATION OR DESIGN	COMPENSATION	TOTAL
Saskatchewan Highways	1	0	1
Saskatchewan Power Corporation	1	3	4
Saskatchewan Telecommunications	4	4	8

(c)

Number and Nature of Claims Negotiated by the Board in 1991 (by Expropriating Authority)

EXPROPRIATING AUTHORITY	ROUTE, SITUATION OR DESIGN	COMPENSATION	TOTAL
Saskatchewan Highways	1	0	1
Saskatchewan Power Corporation	2	4	6
Saskatchewan Telecommunications	6	6	12
Miscellaneous	0	1	1

(d)

Resolution of Claims Negotiated by the Board in 1991 (by Expropriating Authority)

EXPROPRIATING AUTHORITY	NEGOTIATED SUCCESS-FULLY	NEGOTIATED UNSUCCESS-FULLY	NO CHANGE	TOTAL
Saskatchewan Highways	0	0	1	1
Saskatchewan Power Corporation	4	0	0	4
Saskatchewan Telecommunications	2	6	1	9
Miscellaneous	0	1	0	1

(e)

Number and Nature of Claims Resolved by the Board in 1991 (by Expropriating Authority)

EXPROPRIATING AUTHORITY	ROUTE, SITUATION OR DESIGN	COMPENSATION	TOTAL
Saskatchewan Highways	1	0	1
Saskatchewan Power Corporation	2	2	4
Saskatchewan Telecommunications	5	4	9
Miscellaneous	0	1	1

(f)

Number and Nature of Claims Received by the Board (1981 - 1991)

YEAR	ROUTE, SITUATION OR DESIGN	COMPENSATION	TOTAL
1981	53	55	108
1982	38	58	96
1983	4	8	12
1984	8	22	30
1985	8	12	20
1986	52	31	83
1987	17	17	34
1988	20	14	34
1989	17	20	37
1990	3	3	6
1991	6	7	13

(g)

Number of Claims Received by the Board by Expropriating Authority (1981 - 1991)

YEAR	CONSERVATION & DEVELOP-MENT AREA AUTHORITIES	SASK HIGHWAYS	SASK POWER	SASK TEL	MISC.
1981	7	11	80	4	6
1982	33	2	53	8	0
1983	0	0	1	11	0
1984	0	7	5	17	1
1985	1	2	4	11	2
1986	2	12	31	36	2
1987	1	2	1	28	2
1988	2	6	8	17	1
1989	0	5	14	18	0
1990	0	1	0	4	1
1991	0	1	4	8	0

(h)

Number and Nature of Claims Negotiated by the Board (1981 - 1991)

YEAR	ROUTE, SITUATION OR DESIGN	COMPENSATION	TOTAL
1981	51	51	102
1982	38	58	96
1983	2	8	10
1984	38	28	66
1985	10	33	43
1986	54	49	103
1987	51	50	101
1988	47	41	88
1989	25	36	61
1990	8	15	23
1991	9	11	20

(i)

Number of Claims Negotiated by the Board by Expropriating Authority (1981 - 1991)

YEAR	CONSERVATION & DEVELOP-MENT AREA AUTHORITIES	SASK HIGHWAYS	SASK POWER	SASK TEL	MISC.
1981	7	11	80	4	0
1982	33	2	53	8	0
1983	0	0	1	9	0
1984	32	3	5	26	0
1985	1	9	7	25	1
1986	3	15	36	48	1
1987	4	7	34	54	2
1988	4	9	32	41	2
1989	0	9	14	38	0
1990	0	5	3	14	1
1991	0	1	6	12	1